

MEETING OF THE BOARD OF CREDIT UNION ADVISORS

July 16, 2015

1:00pm

**Utah Department of Financial institutions
324 South State Street, Suite 201
Salt Lake City, Utah**

Minutes

Board Members Present:

Scot Baumgartner and Meagan Nattress
Dean Hirabatashi (excused)

Department of Financial Institutions Staff Present:

Ed Leary, Paul Allred, Darryle Rude, Riley Bergstedt, and Emily Stanton

Others present:

Bret Rigby, TransWest Credit Union; and Heather Line and Stephen Nelson, Utah Credit Union Association

- 1. Call meeting to order** – Scot Baumgartner
- 2. Minutes** – No quorum present. Meeting minutes from April 23, 2015 will be carried over to the next meeting.
- 3. Welcome and Introductions** – Scot Baumgartner

This is a quarterly meeting that we hold to discuss the important needs of the state chartered credit unions.

- 4. CUNA “Exam Bill of Rights”** – Riley Bergstedt

This version of CUNA’s Bill of Rights has the commentary which references the NCUA Examiner Guide. This is a follow up from the discussion regarding exam management at the meeting on April 23rd. Riley felt that this was important and wants to give everyone the option to comment and make sure everyone is on the same page.

In addition to discussing exam management, the need for communication throughout the examination process, and the impact examiners had on operations; some of the feedback

from the smaller credit unions at the Board of Credit Unions Advisors meeting on April 23rd was that there was fear when they find out our department is coming for an examination.

Riley said that that should never be, being examined is part of being in a regulated industry. It's not always pleasant, but part of being in this industry.

Riley mentioned that he's coming up on one year as the Supervisor of Credit Unions and that he is still trying to get a feel for the position, but this topic is worthy of spending time on. Having this meeting, communicating with industry, making sure we have open lines of communication is important.

Riley asked if there are particular items on this Exam Bill of Rights that anyone would like to discuss. The department is looking for feedback, particularly from the industry side.

Heather Line had some feedback to share. She works with many credit unions post exam, helping them to come up with actions plans. She said there is always a general amount of frustration; the credit unions are frustrated at the amount of directives that seem to not be supported by anything other than the examiners opinions. This is an ongoing complaint that she has heard repeatedly, the industry wants to know where the directives are coming from and specifically where the examiners are coming from.

Heather lets the credit unions know that part of what examiners come in to do is not only make sure that you're dotting all the I's and crossing all the T's, but that there is an element of subjectiveness in trying to determine whether you're a threat to the share insurance fund and if you're operating in a safe manner. Sometimes it's laws, regulations and official guidance, and sometimes there are legal opinions that can come out from regulators; other times there is simply "this is our experience and it's a best practice." But, even if the directive is just an examiners gut feeling, they should be able to support it with an explanation of why they feel that way even, if there is no exact law or regulation that they could cite.

Riley responded that examiners should never be putting down opinions on an exam report. The blessing and curse of being an examiner is they go to a lot of institutions, our examiners see a lot of the state credit unions and then banks, they see practices and they pick up things that people are doing. A suggestion or best practice may be something they have seen somewhere, something that was working well for someone else. We will work on having them present it that way. Any rule or regulation should have a citation and should be in the report. Our examiners should be able to cite our code, the NCUA code, or the rule or regulation that they are basing the findings off of.

Heather added that the industry has been voicing concerns about examiners being nitpicky, having things on reports on that are not as important as other things.

She referenced #12 from the Exam Bill of Rights:

- *“Credit Unions have the right for their exam findings and directives to be risk prioritized.”*

For a lot of credit unions this is really critical, specifically for those who have a board of directors that are less skilled with knowing what things they should really focus on. The credit unions would benefit from a direction of “this is what you should focus on first, this is worth your time and money to fix.” Heather suggested that some additional support in that area would be appreciated.

Brett Rigby added that he has asked the question of NCUA regulators, what are the top three priorities, they have responded with they are all important, which makes it incredibly difficult as a credit union to prioritize what we can address first.

Riley responded. The significant difference between the NCUA and the State Exams is we don’t do the same bullet point report that the NCUA generates, we do a full on narrative. You should have the findings and recommendations and know what is going to be in the report at the exit meeting. You shouldn’t be surprised at the exit meeting, but if you are surprised at exit meeting that’s because we want to avoid any surprise or embarrassment at a board meeting. So if you’re caught off guard at the exit meeting, it’s unfortunate, it does happen, there should have been more communication throughout, but hopefully you have been spared the agony of a surprise in a board meeting.

That being said, our examiners do utilize risk prioritizing in our reports, if one component is rated lower it will move up in the report. You won’t always go in CAMELS order. The components are in the order they are in an effort to prioritize, examiners want your attention on those components that are rated lower. We are one of the very few states that does not use AIREs, our report is more in alignment with what you would see from a bank exam, with a lengthy narrative; we have more leeway to move the components around.

Moving forward, if everything is the same, we will just go in CAMELS order, but if there is something that needs more immediate attention that will be earlier on the report.

Scot Baumgartner commented that if the credit unions understand when the report comes out, it has been risk prioritized it might be a little easier for them to follow through. Knowing the components and recommendations are intentionally ordered with the priorities coming first in the report will help to put a valuation on things.

Riley commented this is communication that the department will encourage our examiners to have before we leave the institution. In the exit meeting we should be going through the CAMELS and the recommendations for each. That would be a time for questions from the

institution and a time to review the order of the CAMELS and what should be the highest priority.

There was a discussion regarding technical exceptions. Heather asked if the credit unions have the chance to review the list of TEs before it goes to the board and ask for corrections to be made to it.

Riley explained a list of TE's should be given before we leave the institution. After the exit meeting there is about a week or so before the report will be published. Time is a critical factor. Response from the institution absolutely needs to be made in a timely manner. We're very open to removing TE's, but once that report is published, it's out. In our exam process, once we have the exit meeting and leave, the EIC has a writing week back in the office, during that following week there should still be communication between the institution and our department to clear up technical exceptions.

Megan Nattress asked why this is such a big issue this year, she has never heard so many complaints from the industry about audits. She asked if there were changes made this year that may be affecting recent exams. A discussion was had about the factors impacting the exam experience.

Heather suggested that these issues have always been around, however, the industry is changing and there are things that have happened in the last 3-4 years that have ramped things up when regulators are looking at risk.

Scot commented that it depends on who you talk to and what group you associate with. Underlying certainty is no one likes exams.

Riley said that as an examiner, he was a little immune to these issues, now as a supervisor he's immersing himself in this feedback to hopefully create a better experience moving forward. Riley stated that he may have changed positions from examiner to supervisor, but he has not given any new directives to the examiners about going in with a different or aggressive attitude. Riley reiterated that we are now fully staffed with 41 examiners, 17 of them have been with the department 3 years or less. Training is an ongoing process. We have hired individuals with experience, but it's now a matter of taking that experience and focusing on using it as a regulator. There was a discussion about the need for consistency in exams and knowledgeable examiners.

Darryle commented about how it's a balancing act, from going into a very sophisticated shop to a very non sophisticated operation. Examiners with experience may be inclined to pass on all their knowledge and all the best practices. Our examiners have received coaching on how they can share experiences with the institutions and provide valuable information, but they have been instructed to avoid writing those experiences in the report where it would take away from the true risks or violations of the law.

At a recent DFI staff meeting The Examination Bill of Rights was given out to the examiners in attendance; additionally Riley emailed it out to each examiner and asked for their comments and feedback. Most of the comments from the examiners centered around *“we are doing this, this is common sense.”* One Examiner inquired about why this was even sent out, because this is what they do every day. Darryle suggested that the new examiners have probably seen this in practice, but may have not seen it in writing.

Riley plans on sending a follow up email to the examiners to share feedback from this meeting and continue to encourage open lines of communication throughout the examination process.

From the feedback Riley received, an examiner inquired specifically about #13 and #14, respectively:

- *“Credit Unions have the right to appeal examiner findings, conclusions, or directives without retaliation from their regulator.”*
- *“Instructions on how to appeal examiner findings, conclusions, or directives should be detailed on every examination report form that is provided to credit unions.”*

Riley asked if there are questions among the State Credit Unions about an appeals process, and if they feel it’s necessary to incorporate written instructions for an appeal in the report. There was a discussion regarding the appeals process. Heather inquired specifically about how a credit union would go about submitting a formal appeal.

Riley responded that there is no formal appeal process for the state chartered credit unions. If you are unable to work things out with the examiner in charge, sometimes you will have to agree to disagree, but Riley hopes that credit unions will come to him directly with any issues or questions. Riley stated that his boss is Darryle, the Chief Examiner, and Darryle’s boss is Ed, the Commissioner. We are all accessible. The first step is to contact Riley directly.

Riley plans to follow up on the appeals topic in the next meeting, additionally; we will reach out to the Credit Unions by email and ask if we need something more formal in our transmittal letter instructing the institutions to contact Riley with any issues.

Darryle and Riley clarified about the survey that is sent out to credit unions after the exam. The survey is sent out and received anonymously; it’s handled by Michael Jones the Finance Director, who is not involved in the examination process. Institutions have the option to rate the exam experience, leave feedback anonymously, and request to be contacted by someone in our department. Michael records the information supplied in these surveys, if he gets enough of the same complaints in any specific area, he will let Darryle know that the issue needs to be addressed. Unfortunately, not all of the institutions complete this survey.

From the feedback Riley received, an examiner commented specifically about #20:

- *“State credit unions have the right to a lead examiner that is a state regular, consistent with the credit union’s charter type.”*

There was a discussion about the impact an NCUA examiner has on the exam experience.

Riley is looking to reinstall the mentality of the state truly leading the exam. The NCUA does seem to be attending exams more frequently. That is their right as the insurer; however, we don’t do joint exams; these are our exams and our CAMELS ratings. If the NCUA chooses to do their own ratings or issue a separate report, that is their prerogative. Riley is curious about how great of an impact the NCUA examiners have on the perception from the industry.

Scot mentioned feedback that he has heard indicating NCUA examiners tend to steamroll state examiners. Especially with credit unions that may be having issues. They are seeing and hearing more from the NCUA to the point where some credit unions are considering ditching the state charter because if the NCUA is this involved already, there is no point in continuing on with a state regulator.

Riley affirmed that we will recommit our examiners to taking the lead on the exams and working to avoid being steamrolled in the future. He will encourage them to be more assertive. We will instruct examiners to not back down if they disagree with the NCUA examiner, instead, if there is a real difference in opinion on a rating, be assertive and take the lead.

5. The Wall Street Journal Article – Treasury Scrutinizes Credit Unions – Riley Bergstedt

The Wall Street journal reviewed a report from the Treasury Department’s Financial Crimes Enforcement Network that cited credit unions increased vulnerability to potential money laundering. Money Services Businesses are increasingly turning to credit unions for banking services because they have been driven away from the larger national banks. Credit unions without the proper controls may run into problems. Riley wants everyone to be aware of the trend. Heather commented that they are aware of this issue and training is ongoing.

6. NCUA Field of Membership Changes and RBC2 – Riley Bergstedt

There was a discussion about some of the proposed field of membership changes, member business lending and the dual charter system.

Regarding the dual charter system, Riley said, at the end of the day where you have your charter is strictly a business decision. The board and management needs to weigh the options and make the decisions that will be best for the credit union moving forward. Riley would like to know the industry's feedback on these changes and would like the opportunity to address any concerns at the next meeting. You are welcome to email questions or comments to Emily or directly to Riley.

7. Next Meeting – October 15, 2015 at 1:00 p.m.

Riley encouraged everyone in attendance to reach out to the state chartered credit unions to let them know this is their voice with our department and an opportunity to exchange ideas and share feedback.

8. Meeting Adjourned.